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## GENERAL NOTICES

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### NOTICE 735 OF 2013

#### DEPARTMENT OF ENVIRONMENTAL AFFAIRS

#### EXPLANATORY SUMMARY OF THE NATIONAL ENVIRONMENTAL MANAGEMENT: AIR QUALITY AMENDMENT BILL, 2013

The Minister of Water and Environmental Affairs intends introducing the National Environmental Management: Air Quality Amendment Bill, 2013 in Parliament during August 2013. An explanatory summary of the Bill is hereby published in accordance with Rule 241 (1) (c) of the Rules of the National Assembly.

A copy of the draft Bill can also be obtained from Mr Sibusiso Shabalala.

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**BOMO EDITH EDNA MOLEWA**

**MINISTER OF WATER AND ENVIRONMENTAL AFFAIRS**

## **MEMORANDUM ON THE OBJECTS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT: AIR QUALITY AMENDMENT BILL, 2013**

### **1. OBJECTS OF BILL**

The objects of the Bill is to amend the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004) (the Act), so as to so as to substitute certain sections; to align the establishment of the National Air Quality Advisory Committee with the requirements of the National Environmental Management Act, 1998; to change the timeframes on the submission of the priority area air quality management plan to the Minister for approval; to provide for the consequences of unlawful commencement of listed activity; to provide for monitoring, evaluation and reporting on the implementation of the pollution prevention plan; to provide for the Minister as licensing authorities in situations where the province, as a delegated licensing authority by the municipality, is the applicant for an atmospheric emission licence, where the applications are trans-boundary, where the air activity forms part of national priority project, where the activity is also related to the environmental impact and waste management activities authorised by the Minister; to delete cross references to the Environmental Conservation Act, 1989; to clarify that applications must be brought to the attention of interested and affected parties soon after the submission to the licensing authority; to provide for a validity period of provisional atmospheric emission licence; to clarify a criteria on fit and proper person for the purposes of applications for atmospheric emission licences; to create an offence for non-compliance with controlled fuels standards; to provide for the development of regulations on the procedure and criteria for administrative fines; to delete certain obsolete provisions.

## **2. BACKGROUND**

2.1 The purpose of the Act was to replace the outdated Atmospheric Pollution Prevention Act, 1965 (Act No. 45 of 1965). The Act brings air quality management in line with the Constitution allocation of functions between the three spheres of government. In the main, the Act provides for a more effective regulatory regime, including the establishment of national norms and standards, a framework for air quality management planning and reporting regime and numerous regulatory instruments for the control of air pollution and compliance and enforcement.

2.2 The Act has been in operation since 2005. The National Department of Environmental Affairs and the provincial departments responsible for environmental affairs have identified certain provisions of the Act that have become obsolete.

## **3. CLAUSE BY CLAUSE ANALYSIS**

### **3.1 Clause 1: Amendment of section 1**

Clause 1 seeks to correct the definitions for "Department" and "Minister". The definition for "Environment Conservation Act" is deleted as due to the amendments, it will no longer be used in the Act.

### **3.2 Clause 2: Amendment of section 13**

Clause 2 seeks to amend section 13 of the Act to align the establishment of the National Air Quality Advisory Committee with the requirements of section 3A of NEMA.

### **3.3 Clause 3: Amendment of section 19**

Clause 3 amends section 19(1)(b) to change the period for submitting an priority area air quality management plan to the Minister for approval from six months to 24 months as it is not possible in practice to complete and consult on the plan within six months.

### **3.4 Clause 4: Insertion of section 22A**

Clause 4 inserts section 22A to provide for the consequences of unlawful conducting of listed activities.

### **3.5 Clause 5: Amendment of section 29**

Clause 5 Seeks to provide for monitoring, evaluation and reporting requirements on the implementation of the approved pollution prevention plan.

### **3.6 Clause 6: Amendment of section 36**

Clause 6 seeks to extend the powers of the National Minister responsible for environmental affairs to provide for situations where the applicant for atmospheric emission licence is the provincial organ of state, who has been delegated by the municipality the power to issue Atmospheric Emission Licences, or where the listed activity falls under two provinces, or whenever the air quality activity forms part of any strategic infrastructure project approved by Cabinet, or where the activity is also related to the activities listed under the National Environmental Management Act, 1998 and National Environmental Management: Waste Act, 2008 authorised by the Minister. The amendment also provide for the issuing of an integrated environmental authorisation for activities listed under the National Environmental Management Act,

1998, National Environmental Management: Waste Act, 2008 and the Act. This amendment further provides for the Minister and the relevant licensing authorities to enter into an agreement regarding certain activities that may be authorised either by the Minister or the relevant licensing authority.

### **3.7 Clause 7: Amendment of section 38**

Clause 7 seeks to delete reference to section 22 of the Environment Conservation Act, 1989, as the EIA regulations and notices in terms of this section have been repealed.

### **3.8 Clause 8: Amendment of section 39**

Clause 8 seeks to delete reference to section 22 of the Environment Conservation Act, 1989, as the EIA Regulations and notices in terms of this section have been repealed.

### **3.9 Clause 9: Amendment of section 40**

Clause 8 seeks to delete reference to section 22 of the Environment Conservation Act, 1989, as the EIA Regulations and notices in terms of this section have been repealed. Section 40 of the Act has further been amended to clarify the intention of this section.

**3.10 Clause 10: Amendment of section 41**

Clause 10 seeks to provide for a period of validity of 1 year for provisional atmospheric emission licence from the date of commissioning.

**3.11 Clause 11: Amendment of section 49**

Clause 11 seeks to clarify the intention of section 49 to mean that where a juristic person employs a director or manager, that was previously employed by another juristic person and which juristic person contravened air quality legislation or its licence was suspended, the current juristic person could be found to be not fit and proper person.

**3.12 Clause 12: Amendment of section 51**

In order to ensure compliance with the provisions of the Act, clause 12 inserts that not complying with section 28 of the Act is an offence.

**3.13 Clauses 13: Amendment of section 53**

This is a consequential amendment necessitated by the insertion of section 22A. Clause 13 seeks to provide the Minister with a legal mandate to develop regulations on the procedure and criteria to be followed in the determination of an administrative fine.

### **3.14 Clause 14: Repeal of sections 62**

Section 62 deals with transitional provisions regarding listed activities. The national list of emission standards has been published. Clauses 14 seek to repeal sections 62 of the Act as it is no longer relevant.

### **3.15 Clause 15: Repeal of section 63**

Section 63 deals with the transitional provisions regarding ambient air quality standards. These air quality standards have finally been published. Clause 15 seeks to repeal section 63 of the Act as it became obsolete.

### **3.16 Clause 16: Repeal of schedule 2**

Schedule 2 sets out the transitional ambient air quality standards. In light of the fact that the Department seek to repeal section 63 of the Act, schedule 2 thus became obsolete.

## **4. FINANCIAL IMPLICATIONS FOR THE STATE**

There would be no financial implications for the Department.

## **5. ORGANISATIONAL AND PERSONNEL IMPLICATIONS**

The amendments do not require new structures or capacity within the Department.

## **6. COMMUNICATION IMPLICATIONS**

Appropriate communication measures will be implemented by the Government Communication and Information System.

## **7. PROVINCIAL IMPLICATIONS**

Where the applicant for atmospheric emission licence is the provincial organ of state or where the listed activity falls under two provinces, the licensing authority will be the National Department of Environmental Affairs.

## **8. CONSTITUTIONAL IMPLICATIONS**

None

## **9. PARLIAMENTARY PROCEDURE**

9.1 The State Law Advisers and the Department of Environmental Affairs are of the opinion that this Bill must be dealt with in accordance with the procedure prescribed by section 76(1) or (2) of the Constitution since it falls within functional areas listed in Part A or B of schedule 4 of the Constitution, to wit "environment" and "air pollution", respectively.

9.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or custom of traditional communities.